

IOWA BOARD OF NURSING

In RE: Petition for)	Declaratory Ruling No. 100
Declaratory Ruling Filed By:)	
Larry W. Hertel, R.N.)	Request to Affirm That an RN
October 30, 1998)	Level of Care is Required For
)	the Entire 16 Hours of Private
)	Duty Nursing Services Being
)	Provided for a Client

A petition for declaratory ruling was filed with the Iowa Board of Nursing by Larry W. Hertel, R.N., M.S.N., President and Administrator, Professional Home Health Services, Inc., on October 30, 1998.

The Board is authorized to issue declaratory rulings "as to the applicability of any statutory provision, rule, or other written statement of law or policy, decision, or order of the agency" pursuant to 1997 Iowa Code § 17A.9. See also 655 IAC 9.

The petitioners request that the board affirm that a registered nurse level of care is required for the entire 16 hours of private duty nursing services being provided the client.

The facts leading to this case are as follows:

Professional Home Health Services, Inc. is a licensed home health agency in Cedar Rapids, Iowa.

The agency has provided nursing care for a three-year-old girl sixteen hours per day in her home since January 1, 1998. The client was born prematurely. Her diagnoses are as follows: bronchopulmonary dysplasia, stenosis of the larynx, secundum atrial/septal defect, esophageal reflux, amblyopia, and

developmental delays. She also has a gastrostomy button and tracheostomy.

The client has a multitude of nursing care needs which include, but are not limited to, continued assessment, monitoring of her general physical condition, respiratory status, determination of O2 saturation levels with titration of O2 accordingly, assessing quality and quantity of tracheal secretions, assessing and treating the tracheal stoma, assessing and monitoring adequate hydration and nutrition, assessing the gastrostomy stoma for signs and symptoms of infection or granuloma, and replacing the gastrostomy button PRN. The client's pediatrician has ordered that only a registered nurse can reinsert the tracheostomy tube when it becomes dislodged.

The client receives nursing care services through the Medicaid EPSDT program and Exception to Policy. A prior authorization was approved from the period April 30, 1998 through October 31, 1998, for the following home care services: Eight hours of registered nurse services per day to be billed to the EPSDT program and eight hours of licensed practical nurse services per day to be billed to the Exception to Policy program.

Sandra Byard, R.N., B.S.N., Clinical Services Supervisor of Professional Home Health Services, Inc., determined that the licensed practical nurse level of care was inappropriate for this client. Ms. Byard corresponded with individuals at the Department of Human Services on several occasions requesting the

level of care be changed from licensed practical nurse to registered nurse.

Ms. Byard also corresponded with Board of Nursing staff during this time frame and was advised that "regardless of issues related to funding, if the registered nurse determines that the level of care needed requires the knowledge and skills ascribed to the registered nurse, then the skills may not be delegated to the licensed practical nurse.

Due to the fact that the issue was not being resolved to the satisfaction of either the parents or the health care providers, an appeal was made to the Department of Human Services to increase the level of registered nursing care to sixteen hours per day. The case was heard by Ronald R. Pohlman of the Division of Appeals and Fair Hearings in the Iowa Department of Inspections and Appeals. On September 28, 1998, Mr. Pohlman issued his ruling which reversed the Department of Human Services decision. The administrative law judge determined that all of the client's care should be at the registered nurse level. Additionally, the ruling stipulated that the care should be provided by the EPSDT program.

Despite the September 28, 1998 ruling of the administrative law judge, the medical review department at Consultec (fiscal agent for the state) refuses to abide by this decision for the new prior authorization period beginning November 1, 1998. If the parents wish to receive payment for all sixteen hours of care at the registered nurse level, they must go through a second

appeal process for the new prior authorization period which began November 1, 1998.

Despite the opinion of DHS, the home health agency has continued to provide care by a registered nurse sixteen hours per day because of the pediatrician's orders and because in the opinion of the registered nurses, the client requires the level of care ascribed to the registered nurse.

Additional facts:

The responsibility of the registered nurse in the provision and supervision of nursing care is found in 655 IAC chapter 6.

655 IAC 6.2(5) addresses the legal implications of accountability. 655 IAC 6.2(5) states:

The registered nurse shall recognize and understand the legal implications of accountability. Accountability includes but need not be limited to:

b. Assigning and supervising persons performing those activities and functions which do not require the knowledge and skill level currently ascribed to the registered nurse.

655 IAC 6.2(5)"d" states:

Supervising, among other things includes any or all of the following:

(2) Assumption of overall responsibility for assessing, planning, implementing and evaluation nursing care.

(3) Delegation of nursing tasks while retaining accountability.

The rules require the registered nurse to be individually accountable for assuring that the client is provided safe, effective nursing care. This includes careful analysis of the client's needs and circumstances to determine the level of

nursing care needed by the client. The registered nurse who provides direct care to the client or who functions in the role of care manager is uniquely qualified to make the determination in regard to the level of nursing care needed and determining the appropriateness of delegating nursing tasks to the licensed practical nurse.

The rules of the board specifically state that the registered nurse may assign only those activities and functions which do not require the knowledge and skill currently ascribed to the registered nurse. A registered nurse, who after making the determination that the client requires a level of nursing care ascribed to the registered nurse, yet delegates that care to the licensed practical nurse, would be subject to sanction by the board of nursing.

In this case, the technical skills required by this client, with the exception of replacing the gastrostomy button, are within the scope of practice of the licensed practical nurse. The petitioners state, in this case, the other function they would not assign to the licensed practical nurse is replacement of the tracheostomy.

In addition to requiring the provision of numerous technical skills, the client also requires a high level of assessment skills which are critical to her safety and well-being. Although the Board of Nursing permits the licensed practical nurse to perform physical assessment when the findings are verified by the registered nurse, the petitioners have determined that the level of assessment required for this client requires the knowledge and

skill of the registered nurse. An administrative law judge also concurs with this opinion.

While the board did not make an individual assessment of this client, the board holds to its previous position that the individual nurse is accountable for determining that nursing care is adequate and appropriately delivered. In this case, three registered nurses directly involved in the care of this client, have determined that this child requires the level of nursing care ascribed to the registered nurse. Based on the opinion of the registered nurses directly involved in the care of this client and the board's position that the registered nurse is accountable for determining that nursing care is adequate and appropriately delivered, the board affirms the position of the petitioners.

Sandra K Bane

Sandra K. Bane, R.N., B.S.N.
Chairperson
Iowa Board of Nursing

December 10, 1998

Date

Lorinda K. Inman

Lorinda K. Inman, R.N., M.S.N.
Executive Director
Iowa Board of Nursing

December 10, 1998

Date